

Federal Emergency Management Agency

§ 5.56

section will inform the requestor (1) that the agency has determined at the present time to deny the request because the records have not yet been found or examined, but (2) that the agency will review the request within a specified number of days, when the search or examination is expected to be complete. The denial letter will state the name and title or position of the official responsible for the denial of such request. In such event, the requestor may file an agency appeal immediately, pursuant to § 5.55.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986]

§ 5.55 Appeal within FEMA of denial of request.

(a) A requestor denied access, in whole or in part, to FEMA records may appeal that decision within FEMA. All appeals should be addressed to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC, 20472 regardless of whether the denial being appealed was made at Headquarters, in a field office, or by a Regional Director.

(b) An appeal must be received in the Headquarters FOIA Office no later than thirty calendar days after receipt by the requestor of the initial denial.

(c) An appeal must be in writing and should contain a brief statement of the reasons why the records should be released and enclose copies of the initial request and denial. The appeal letter should bear the legend, "FREEDOM OF INFORMATION APPEAL," conspicuously marked on both the face of the appeal letter and on the envelope. FEMA has twenty workdays after the receipt of an appeal to make a determination with respect to such appeal. The twenty day time limit shall not begin to run until the appeal is received by the Headquarters FOIA Officer. Misdirected appeals should be promptly forwarded to that office.

(d) The Headquarters FOIA Officer will submit the appeal to the Deputy Director for final administrative determination.

(e) The Deputy Director shall be the deciding official on all appeals except in those cases in which the initial denial was made by him/her. If the Dep-

uty Director made the initial denial, the Director will be the deciding official on any appeal from that denial. In the absence of the Deputy Director, or in case of a vacancy in that office, the Director may designate another FEMA official to perform the Deputy's functions.

(f) If an appeal is filed in response to a tentative denial pending locating and/or examination of records, as described in § 5.53(c), FEMA will continue to search for and/or examine the requested records and will issue a response immediately upon completion of the search and/or examination. Such action in no way suspends the time for FEMA's response to the requestor's appeal which FEMA will continue to process regardless of the response under this paragraph.

(g) If a requestor files suit pending an agency appeal, FEMA nonetheless will continue to process the appeal, and will furnish a response within the twenty day time limit set out in paragraph (c) of this section.

(h) If, on appeal, the denial of the request for records is in whole or in part upheld, the Deputy Director will promptly furnish the requestor a copy of the ruling in writing within the twenty day time limit set out in paragraph (c) of this section except as provided in § 5.55. The notification letter shall contain:

(1) A brief description of the record or records requested;

(2) A statement of the legal basis for nondisclosure;

(3) A statement of the name and title or position of the official or officials responsible for the denial of the initial request as described in § 5.54 and the denial of the appeal as described in paragraph (f) of this section, and

(4) A statement of the requestor's rights of judicial review.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980; 50 FR 40006, Oct. 1, 1985]

§ 5.56 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed in §§ 5.52 and 5.55 may be extended by an official named in § 5.54(a) who will provide written notice to the requestor setting forth the reasons for such extension and the date on which a